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4 FRANCISCO J. SERRANO,
5 Petitioner,
6 v.
7 JEFF MACOMBER,
8 Respondent.

9 Case No. 14-cv-03106-JD
10
11

**ORDER GRANTING MOTION TO
DISMISS UNEXHAUSTED CLAIMS**

Re: Dkt. No. 8

12
13 Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant
14 to 28 U.S.C. § 2254. As grounds for federal habeas relief, petitioner asserts that there was: (1)
15 insufficient evidence to support aggravated assault due to the lack of evidence to corroborate a
16 witnesses' testimony; (2) insufficient evidence support active participation in a criminal street
17 gang; and (3) an error in sentencing. Respondent has filed a motion dismiss because only the first
18 claim in the petition was fully exhausted, thus it is a mixed petition. Petitioner has filed a
19 response requesting that the unexhausted claims be dismissed and the action continue on the
20 exhausted claim that there was insufficient evidence to support aggravated assault due to the lack
21 of evidence to corroborate a witnesses' testimony. Petitioner's request is granted.¹

22 **CONCLUSION**

23 1. The motion to dismiss (Docket No. 8) is **GRANTED** and this action continues on
24 the one claim described above.

25 2. Respondent shall file with the Court and serve on petitioner, within fifty-six (56)
26 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules

27
28 ¹ Petitioner was informed of the process to request a stay to exhaust the remaining claims, but he
has not filed a motion for a stay.

1 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
2 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state
3 trial record that have been transcribed previously and that are relevant to a determination of the
4 issues presented by the petition.

5 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
6 Court and serving it on respondent within twenty-eight (28) days of his receipt of the answer.

7 3. Petitioner is reminded that all communications with the Court must be served on
8 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must keep
9 the Court informed of any change of address and must comply with the Court's orders in a timely
10 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
11 to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir.
12 1997) (Rule 41(b) applicable in habeas cases).

13 **IT IS SO ORDERED.**

14 Dated: July 29, 2015

15 
16 JAMES DONATO
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANCISCO J. SERRANO,
Plaintiff,
v.
JEFF MACOMBER,
Defendant.

Case No. 14-cv-03106-JD

CERTIFICATE OF SERVICE

JEFF MACOMBER,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 29, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Francisco J. Serrano ID: AK7419
CSP-SAC C-2-226
P.O. Box 290066
Represa, CA 95671

Dated: July 29, 2015

Richard W. Wieking
Clerk, United States District Court

By: Lisa R. Clark
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO